

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EASTERN CONTRACTORS, INC.,

Plaintiff,

v.

CITY OF WORCESTER and THOMAS
R. HOOVER, City Manager, and HEERY
INTERNATIONAL, INC. and THOMAS E.
ELLIS, JR.

Defendants.

Civil Action No. 03-12216MLW

**MOTION OF THE DEFENDANT, HEERY INTERNATIONAL, INC., TO FILE
REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO QUASH
SUBPOENA SERVED ON FLANSBURGH ASSOCIATES, INC.
AND FOR PROTECTIVE ORDER**

The defendant, Heery International, Inc. ("Heery"), moves for leave to file a Reply to the Opposition of Eastern Contractors, Inc. ("Eastern") to Heery's Motion to Quash the subpoena served on Flansburgh Associates, Inc. ("Flansburgh") and for a Protective Order. As grounds for this motion, Heery states that its reply brief addresses several new issues raised in Eastern's Opposition that Heery did not have the opportunity to address in its motion papers, and it will assist the Court in rendering a fair and just decision on Heery's motion. In particular, Heery seeks to inform the Court that Eastern admits in its Opposition that it is seeking expert testimony from Flansburgh. This is not the proper basis for a fact deposition to proceed. Moreover, the factual testimony that Eastern's Opposition claims Flansburgh will provide is irrelevant to the claims in this matter. A copy of the reply brief has been filed along with this motion. Counsel for

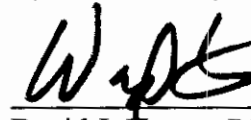
Eastern has indicated that they will consent to the filing of Heery's Reply if Eastern is given the opportunity to file a Sur-Reply.

WHEREFORE, Heery requests that this Court GRANT its motion to file a Reply to the Opposition of Eastern to Heery's Motion to Quash the subpoena served on Flansburgh and for a Protective Order.

RULE 7.1(A)(2) CERTIFICATION

Counsel for Heery hereby certifies that they have attempted to confer with counsel for Eastern and in good faith to resolve or narrow the issues. Counsel for Eastern has indicated that they will consent to the filing of Heery's Reply if Eastern is given the opportunity to file a Sur-Reply.

HEERY INTERNATIONAL, INC. and
THOMAS A. ELLIS,
By their attorneys,

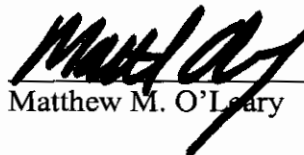


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Dated: June 6, 2005

CERTIFICATE OF SERVICE

I, Matthew M. O'Leary, hereby certify that on this 6th day of June, 2005, I served a copy of the foregoing on all counsel of record by first class mail, postage prepaid.


Matthew M. O'Leary

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